



08 SEP 2006

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In re Application of
Gilbert et al.
Application No. 10/520,986
PCT No.: PCT/GB03/02962
Int. Filing Date: 09 July 2003
Priority Date: 10 July 2002
Atty. Docket No.: 310134.402USPC
For: Molecular Detector Arrangement

DECISION

This is in response to the "Petition To Accord A Filing Date" filed on 25 July 2006.

DISCUSSION

In a Notification mailed on 30 June 2006, the correspondence filed on 02 June 2006 was treated as follows:

The instant correspondence urges that "a copy of the Response as filed on July 27, 2005" be accepted on the basis of return postcard receipt evidence. However, the instant correspondence has not been signed by a registered patent attorney or agent. Further, it appears to have been prepared and signed by "Rosie Price, Legal Assistant to Stephen J. Rosenman, Ph.D." It would not be appropriate to consider the merits of this correspondence (which is in effect a petition to accord a filing date to the "copy of the Response as filed on July 27, 2005") in the absence of the signature of a registered practitioner.

The instant petition is signed by a registered practitioner, who cites an accompanying copy of a return postcard receipt. Said postcard receipt is stamped as "Rec'd PCT/PTO 27 JUL 2005" and itemizes the following:

Check; Transmittal Letter (3 pages + copy); Declaration for Utility or Design Application Using an Application Data Sheet (1 page); Election and Power of Attorney; Statement under 37 C.F.R. § 3.73(b); Form PTO-1595; Assignment (3 pages); Information Disclosure Statement, Form PCT-1449 (1 page); Copies of Cited References (11); and Copy of Notification of Missing Requirements (PCT/DO/EO/905)

The petition is accompanied by copies of a Transmittal Letter, a Declaration, an "Election and Power of Attorney," a statement under 37 CFR 3.73(b), an assignment, an IDS (Form PTO-1449) and 11 prior art references. Petitioner states that, inter alia, the stamped postcard receipt and the "Response to Notification of Missing Requirements are true copies." MPEP 503 states in part that "A postcard receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon on the

date stamped thereon by the PTO.” Following that practice, the itemized correspondence (including *inter alia* the declaration) is regarded as a copy of the correspondence originally filed on 27 July 2005. Since said correspondence included an executed declaration (in response to the requirement set by the Form PCT/DO/EO/905 mailed on 12 July 2005), the holding of abandonment is hereby **WITHDRAWN**.

Inspection of the 25 July 2006 copy of the declaration originally filed on 27 July 2005 reveals that it names “Xiao-Feng ZHOU” as the second inventor, while the published international application nominates “XHOU, Xiao-Feng.” It is not clear from the record whether this discrepancy arose from a mere typographic error or phonetic misspelling of applicant’s name or, alternatively, whether it reflects a substantive change in the name or identity of the inventor. If the latter case obtains, a proper petition and fee under 37 CFR 1.182 would be required to resolve this matter. See MPEP § 605.04(b) and MPEP § 201.03(b). In the absence of an acceptable petition and/or statement addressing this discrepancy, or alternatively a newly executed declaration naming the same inventive entity as nominated in the published international application, it would not be appropriate to accept the declaration under 37 CFR 1.497(a) and (b) at this time.


CONCLUSION

The petition is **GRANTED** to the extent described above.

Applicants have **ONE (1) MONTH** to file a proper response addressing the discrepancy in the declaration described above. Extensions of time under 37 CFR 1.136(a) are **NOT** available. Failure to file a timely response will result in **ABANDONMENT**.

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Mail Stop PCT, P.O. Box 1450, Alexandria, VA 22313-1450, with the contents of the letter marked to the attention of the PCT Legal Office.


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